PROMISING PRACTICES IN HOME AND COMMUNITY-BASED SERVICES

Kansas – Providing Choice among Providers of Financial Management Services

Issue: Consumer-Directed Care – the Agency with Choice Model

Summary

Kansas operates four Medicaid waivers that allow program participants to self-direct their care. These programs permit participants to hire a worker of their choice and choose an organization to act as the Employer of Record for their worker. The programs are noteworthy because of the large number and wide variety of organizations that fulfill this function and the many different ways in which they serve their clients, providing a high level of choice to participants and their representatives.

Introduction

Kansas operates four Medicaid Home and Community Based Services Waivers that offer consumer-directed attendant options. They serve people with physical disabilities (PD), frail elders (FE), people with traumatic brain injury (TBI), and people with developmental disabilities (DD). All of these programs use an Agency With Choice (AWC) model. In this model, the participant or representative is the Managing Employer who recruits and trains the service worker, sets the terms and conditions of employment, manages and, if necessary, discharges the worker. An organization (generally an independent living center or a non-traditional home health agency) is the Employer of Record and is responsible for paying workers, providing workers' compensation insurance, and witholding, filing and paying federal, state and local income and employment taxes.

The option to self-direct is chosen by about 80-85% of participants in two waiver programs and about 33% of participants in the other two.

The considerable variation among the roughly 50 AWC organizations in the State provides program participants with a high level of choice and control. In addition to the core financial management services, some of these organizations provide an array of support services to help participants with the task of self-directing, while others provide few or no supports at all. Worker benefits also vary considerably from organization to organization.

Background

In 1989, Kansas passed a law requiring that all individuals over the age of 16 who receive personal care services from the State have the right to choose whether to self-direct these services. Currently, personal care services are available only through the State's PD, FE, TBI and DD waiver programs, which began offering consumer-directed options in 1991. Centers for Independent Living (CILs), which had advocated for the legislation, led the way in providing the support services needed for individuals to self-direct – in particular, providing the financial management services necessary to hire an independent provider of personal care services. Over time, other groups established other organizations – licensed as home health agencies – to fulfill similar functions.

Self-direction in Kansas includes a broad range of personal care services because the Kansas Nurse Practice Act allows workers to perform some "health maintenance activities" that other states would require to be done by nurses. These may include administration of medications, catheter irrigation, enemas, suppositories, and wound care, if a physician or nurse determines that it is safe for the procedure to be performed by a worker in the home.

Self-direction is very popular in Kansas. Program managers estimate (based on the State's numbers) that 80-85% of participants in the PD and TBI waiver programs and about 33%

of those in the FE and DD waiver programs opt to self-direct their care.

Implementation

Kansas has roughly 50 organizations that act as the Employer of Record for workers employed by participants in the State's waiver programs. In most areas, participants have a choice of local AWC providers but may use any AWC provider in the State. Upon enrollment participants receive a list of providers serving their waiver program.

Organizations that function as AWC providers vary considerably, particularly in the range of services they provide. All provide the core payroll, workers' compensation insurance, and employment tax withholding services. In addition, they are required to offer criminal background checks. Although these are generally done at the request of the participant, they are required for the DD waiver and home health agencies. However, there is considerable variety in the range of additional services AWC providers may offer. Some offer no additional services, while many – often CILs – offer a variety of support and services to participants.

AWC providers are reimbursed for the core financial management services in the same way that traditional home health agencies are reimbursed for their organizational overhead: they retain a portion of the hourly rate paid to the worker by the State. Depending on the waiver program and the overhead deducted by the agency, the worker receives about $7 to $9.50 per hour. The more overhead the agency deducts, the less money is available to the worker. This overhead may also be applied toward worker benefits. One AWC provider, Communityworks, offers workers both health insurance and a 401(k) savings plan, in contrast to many others that do not offer benefits.

Additional self-directed supports and services that AWC providers may provide include worker training; maintenance of worker registries to help individuals identify potential workers; and training participants to recruit, hire, manage, and possibly dismiss attendants. AWC providers may also offer intensive personal support during the hiring process. For example, the staff of the CIL for Southwest Kansas will walk the participant through the whole hiring process and may even attend interviews, if requested.

Participants in the PD waiver receive further support in self-direction from their case managers – known in the program as "Independent Living Counselors" – who are often employed by the organization providing AWC services. Counselors are responsible for determining participants' functional eligibility (although not their financial eligibility); helping participants to develop care plans – with a specific requirement to address plans for emergency backup; and referring participants to community supports.

Self-directed supports and services furnished by AWC organizations are not reimbursed by the State Medicaid agency (except for case management services provided by counsellors, which are Medicaid reimbursable waiver services). AWC providers that wish to provide supports and services must find another funding source (such as the state-only grant funds that support CILs), or stretch their funding for financial management services to cover additional supports and services.

Program managers ascribe the program's success in developing the AWC infrastructure to the state's minimalist, market-based approach. There was no need to actively recruit organizations. Initially, the CILs that had campaigned for self-direction recognized the need to provide services and developed them on behalf of their clients. CILs continue to constitute a large proportion of the AWC providers. However, once the State's self-directed option was in place, a need for more organizations to perform financial management services became apparent. Many other organizations sprang up to meet this need. In addition, a number of families of children with developmental disabilities created their own AWC providers, mainly because CILs did not offer services to these families, focusing instead on serving participants on the PD and TBI waivers.

Organizations wishing to become AWC providers must be CILs or state-licensed home health agencies, except that the DD waiver allows groups of parents to establish AWC providers if they meet a minimal set of

requirements (licensing is not required, because the services provided are not licensed services). The FE waiver has an addition requirement that home health agencies be Medicare-certified.

AWC providers that are licensed as home health agencies are not traditional agencies providing agency-managed services. Except for Medicare-certified AWC providers in the FE waiver, organizations that act as AWC providers are prohibited from delivering direct services. As a result, traditional home health agencies are not active in this area. However, many people who established agencies have experience with traditional service provision.

State-imposed requirements on potential providers are minimal: they must have a tax ID number and demonstrate that they have the ability to withhold employment taxes appropriately. State licensure as a home health agency imposes additional requirements on the workers they employ. Potential workers must prove that they are negative for tuberculosis; pass a criminal background check; not appear on the child abuse and neglect registry; and provide three references. Medicare certification standards are even more strict; consequently, few AWC organizations are Medicare certified.

The variations among AWC providers give program participants a choice of options. They can, and reportedly do, shop around, using the list of providers given to them upon enrollment. For example, they may be assessed by one agency and switch to another once they have hired a worker. They can choose an agency that will allow them to pay their worker less, while offering participants a rich array of self-directed supports and services or providing benefits such as health insurance for workers, or they can elect to use a "bare-bones" provider who will allow them to pay their worker a bit more while providing fewer benefits.

Discussion Questions:

1. How does the design of the self-directed option encourage participation by AWC providers in Kansas?
2. What are the different features that might make a program participant favor one AWC provider over another?
3. How does the lack of funding for support services affect the quality of services?

Impact

The option to self-direct in Kansas, which resulted from intense lobbying from consumer groups, is widely used – perhaps because of its grass-roots level of support. Participants who recruit, hire, and manage their own workers may chose from many available AWC organizations that can act as the Employer of Record for their workers. These organizations range from "mom and pop" providers to CILs to non-traditional home health agencies, thus offering a wide array of choices for participants who self-direct.

Program managers ascribe the success of consumer direction to a high level of consumer education, both by the State and by advocacy groups. They also cite consumers' strong desire to gain control over their services and the effectiveness of advocacy groups in making this a reality. These advocacy groups have been successful in obtaining a high level of support for consumer direction from the State's administrative leadership.

A concern arose regarding potential conflict of interest because the same organizations that provide payroll services are also permitted to assess the service needs of program participants. In response to this concern, the State conducted a formal audit of the AWC providers. It found no evidence of inflated hours in organizations that both conducted assessments and provided payroll services.

Contact Information

For more information about self-direction in Kansas, contact Margaret Zillinger, Director, Community Supports and Services at 785-296-3561 or mmz@srskansas.org. Online information about the programs is available at: http://www.srskansas.org/hcp/cssindex.htm.

One of a series of reports by Medstat for the U.S. Centers for Medicare & Medicaid Services (CMS) highlighting promising practices in home and community-based services. The entire series will be available online at CMS' web site, http://www.cms.gov. This report is intended to share information about different approaches to offering home and community-based services. This report is not an endorsement of any practice.

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